



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2002-0021; FRL-9946-17-OAR]

RIN 2060-AN36

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; request for public comment.

SUMMARY: This action proposes to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP): Site Remediation (Site Remediation Rule) by removing exemptions from the rule for site remediation activities performed under authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and for site remediation activities performed under a Resource Conservation and Recovery Act (RCRA) corrective action or other required RCRA order. The Environmental Protection Agency (EPA) is also proposing to remove the applicability requirement that site remediations be co-located with at least one other stationary source regulated by another NESHAP. The EPA is seeking comment on these issues,

but is not requesting comment on any other issues or provisions of the final Site Remediation Rule at this time.

DATES: Comments. Comments must be received on or before [**insert date 45 days after date of publication in the Federal Register**].

Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before [**insert date 30 days after date of publication in the Federal Register**].

Public Hearing. If anyone contacts the EPA requesting a public hearing by [**insert date 5 days after date of publication in the Federal Register**], we will hold a public hearing on [**insert date 15 days after date of publication in the Federal Register**]. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: Comments. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2002-0021, at <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2002-0021. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA

without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>.

A red-line version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2002-0021).

Docket: The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2002-0021. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy.

Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

Public Hearing: If a public hearing is requested by [**insert date 5 days after date of publication in the Federal Register**], it will be held on [**insert date 15 days after date of publication in the Federal Register**] at the EPA's Research Triangle Park Campus, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing will convene at 10:00 a.m. (Eastern Standard Time) and end at 5:00 p.m. (Eastern Standard Time). A lunch break will be held from 12:00 p.m. (Eastern Standard Time) until 1:00 p.m. (Eastern Standard Time). Please contact Ms. Virginia Hunt at (919) 541-0832 or at hunt.virginia@epa.gov to request a hearing, to determine if a hearing will be held, and to register to speak at the hearing, if one is held. If a hearing is requested, the last day to pre-register in advance to speak at the hearing will be [**insert date 12 days after date of publication in the Federal Register**].

Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration. If you require an accommodation, we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice.

If no one contacts the EPA requesting a public hearing to be held concerning this proposed rule by [**insert date 5 days after date of publication in the Federal Register**], a public hearing will not take place. If a hearing is held, it will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because the hearing will be held at a U.S. governmental facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma, or the

state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses, and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Ms. Hunt if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to

run either ahead of schedule or behind schedule. Again, a hearing will not be held unless requested.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Paula Hirtz, Refining and Chemicals Group, Sector Policies and Programs Division (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-2618; fax number: (919) 541-0246; email address: hirtz.paula@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Tavera Culpepper, Office of Enforcement and Compliance Assurance (OECA); (202) 564-0902; culpepper.tavera@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	confidential business information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPA	Environmental Protection Agency
FR	Federal Register
HAP	hazardous air pollutants
ICR	information collection request
NESHAP	National Emission Standards for Hazardous Air Pollutants
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget

PRA	Paperwork Reduction Act
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
UMRA	Unfunded Mandates Reform Act

Organization of this Document. The information in this preamble is organized as follows:

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- H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
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I. General Information

A. What is the source of authority for the reconsideration action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)).

B. Does this action apply to me?

The table below lists the industry categories and entities potentially regulated by this action and is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. Parties potentially affected by this action include major sources, as defined in 40 CFR 63.2, that conduct one or more site remediations under the authority of CERCLA or under a RCRA corrective action or other required RCRA order; and any other site remediation that is a major source of hazardous air pollutants (HAP) itself and is not co-located with another facility regulated under 40 CFR 63. As defined under the "Waste Treatment and Disposal" industry sector in the "Initial List of

Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" (see 57 FR 31576, July 16, 1992), the Site Remediation source category includes any facility taking action to remove, store, treat, and/or dispose of hazardous substances that have been released into the environment (e.g., soil, groundwater, or other environmental media). The table below is provided for illustrative purposes only; to determine whether your site remediation is regulated by this action, you should examine the applicability criteria in 40 CFR 63.7881 of subpart GGGGG (National Emission Standards for Hazardous Air Pollutants: Site Remediation).

Industrial Source Categories Affected by This Action

Industry Category	NAICS Code¹	Examples of Regulated Entities
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Industry Category	NAICS Code ¹	Examples of Regulated Entities
Industry	325110 325180 325199 325211 325320 333316 562112	Site remediation activities at currently operating or closed businesses at which organic materials currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include, but are not limited to: manufacturing of petrochemicals, inorganic chemicals, organic chemicals, plastics and resins, pesticides and agricultural chemicals, and photographic and photocopying equipment; other warehousing and storage; and hazardous waste collection facilities.
Federal Government	92811	Federal agencies that conduct site remediation activities, including agencies or activities related to national security.

¹ North American Industry Classification System.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <http://www.epa.gov/ttn/atw/siterm/sitermpg.html>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical

documents at this same Web site.

D. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Ms. Paula Hirtz, c/o OAQPS Document Control Officer (Room C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention: Docket ID No. EPA-HQ-OAR-2002-0021.

II. Background

The EPA finalized the Site Remediation Rule on October 8, 2003 (68 FR 58172). The rule exempted site remediations performed under the authority of CERCLA and those conducted under a RCRA corrective action or other required RCRA order. The final rule also did not regulate metal or other inorganic HAP due to the low potential of emissions of these chemicals from site remediation activities. On December 8, 2003, pursuant to section 307(d)(7)(B) of the CAA, the EPA received a petition for reconsideration from Sierra Club, the Blue Ridge Environmental Defense League, and Concerned Citizens for Nuclear Safety. The reconsideration petition stated that (1) the EPA lacked the statutory authority to exempt site remediation activities conducted under the authority of CERCLA or RCRA from NESHAP requirements, and (2) the EPA had a duty to set standards for each listed HAP emitted from a source category.

Petitioners also filed a petition for judicial review of the Site Remediation Rule on December 5, 2003, in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) under CAA section 307(b)(1). In response to the plaintiffs' and EPA's joint motion, the D.C. Circuit held this action in abeyance by order dated January 22, 2004, so that settlement discussions could take place to assess whether the case could be resolved without the Court.

On November 29, 2006, the EPA promulgated amendments to the Site Remediation Rule (71 FR 69011), but did not resolve, address, or respond to the issues in the petition for reconsideration. On October 14, 2014, the D.C. Circuit ordered the parties to show cause why the case should not be administratively terminated, and on November 13, 2014, the parties filed a joint response informing the Court that they were actively exploring a new approach. On March 25, 2015, the EPA issued a letter to the petitioners granting reconsideration on the issues raised in the petition and indicated that the agency would issue a **Federal Register** notice regarding the reconsideration process. The petition for reconsideration is available for review in the rulemaking docket (see Docket ID No. EPA-HQ-OAR-2002-0021-0024).

The EPA now requests comment on the first of the two issues raised in the December 8, 2003, petition for reconsideration: the exemption for site remediations performed under the authority of CERCLA or RCRA. We are not addressing the second issue, whether the EPA has a duty to set standards for heavy metal HAP emissions from site remediation activities, in this action. Since evaluation of this second issue fits most naturally into the residual risk and technology review (RTR) process, the EPA will initiate reconsideration of the issue of regulating heavy metal HAP when it issues a proposed rule

presenting the RTR for the Site Remediation source category. The EPA is not seeking comments on this issue until such a proposal is made.

III. Discussion of the Proposed Action to Remove the CERCLA and RCRA Exemption

The October 8, 2003, NESHAP exempts site remediations performed under the authority of CERCLA and those conducted under a RCRA corrective action or other required RCRA order. The EPA now proposes to remove this exemption and establish requirements and compliance dates for site remediation activities conducted under the authority of CERCLA or RCRA that would be affected by the proposed rule changes.

A. What is the EPA proposing regarding site remediations performed under the authority of CERCLA or performed under a RCRA corrective action or other required RCRA order?

On October 8, 2003, the EPA finalized the July 2002 proposal to exempt site remediations performed under the authority of CERCLA and those performed under RCRA corrective action or other orders authorized under RCRA (i.e., RCRA/CERCLA exemption). Several commenters on the 2002 proposed rule opposed the exemption. These commenters asserted that neither the RCRA nor CERCLA programs have air emission standards for site remediation activities and that the intent of CAA section 112 is to establish NESHAP for HAP emissions from these activities. In

contrast, other commenters supported the proposed exemption, stating that the RCRA and CERCLA cleanup programs have appropriate site-specific provisions to provide for the protection of public health and the environment from air pollutants emitted during site remediation activities. We determined the proposed provisions were appropriate, and we explained in the preamble to the October 8, 2003, final rule and in the Background Information Document for the final rule that the hazardous waste corrective action program under RCRA and the Superfund program under CERCLA serve as the functional equivalents of the establishment of NESHAP under CAA section 112. This conclusion was based on the requirements of these programs to consider the same HAP emissions that we regulate under the NESHAP and that these programs provide opportunities for public involvement through the Record of Decision process for Superfund cleanups and the RCRA permitting process for corrective action cleanups.

The EPA then received the December 8, 2003, petition asserting that the public lacked an opportunity to comment on this new rationale presented in the final rule. The EPA granted reconsideration on this issue in response to the December 8, 2003, petition. Upon further consideration and re-evaluation of petitioners' arguments, we now propose to remove the exemptions

for activities conducted under the authority of CERCLA or RCRA from the Site Remediation Rule.

In listing Site Remediation as a source category under CAA section 112(c)(1) in 1992, we defined it to include the cleanup of sites that possess contaminated media, including National Priorities List Sites and Corrective Action Sites. See the document titled Documentation for Developing the Initial Source Category List, Final Report EPA-450/3-91-030, July 1992, which is available in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2002-0021). Once the EPA has listed a source category or subcategory under CAA section 112(c)(1), CAA section 112(c)(2) requires the EPA to establish emissions standards under CAA section 112(d) for the source category or subcategory. The EPA, thus, has an obligation to extend its existing technology-based NESHAP to establish emission standards for all such sources in the Site Remediation source category, including those conducted under the authority of CERCLA and RCRA, under CAA section 112(d). The site remediation activities conducted under the authority of CERCLA and RCRA are similar to site remediation activities that were not exempt from the Site Remediation Rule, and the requirements of the Site Remediation Rule are appropriate for and achievable by all site remediation activities.

Specifically, we are proposing to amend the rule by removing 40 CFR 63.7881(b)(2) and (3), the provisions that expressly exempt site remediations conducted under CERCLA or RCRA from the Site Remediation Rule's requirements. With the removal of this exemption, site remediations conducted under the authority of CERCLA or RCRA will become subject to all applicable requirements of the Site Remediation Rule. These requirements include emission limitations and work practice standards for HAP emitted from site remediation activities. The Rule also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards. The Rule applies to sites that clean up remediation material containing 1 megagram per year or more organic HAP listed in Table 1 of the Site Remediation Rule. It specifically requires emissions controls and/or work practice requirements for three groups of emission points: process vents, remediation material management units (tanks, containers, surface impoundments, oil/water separators, organic/water separators, drain systems), and equipment leaks. In addition, the rule contains monitoring, recordkeeping, and reporting requirements.

In order to make the rule applicable to CERCLA and RCRA site remediations, we are further proposing to remove the requirement in 40 CFR 63.7881(a)(2) that an affected site

remediation be co-located with a facility that is regulated by other NESHAP (i.e., by a separate subpart under 40 CFR part 63). This is necessary to ensure that site remediations that are themselves major sources of HAP, without regard for co-location with another facility, are now covered by the rule.

We are soliciting comment on these proposed rule amendments. The EPA is accepting comment only on the proposed removal of the exemptions for site remediations conducted under the authority of CERCLA or RCRA. The analyses presented in this notice and in supporting documents in the docket do not affect or alter other aspects of the Site Remediation Rule.

B. What compliance dates are we proposing?

We are proposing to make the recordkeeping and reporting requirements specified in 40 CFR 63.7950-7953 and 63.7955 applicable to new and existing affected sources conducting site remediations under CERCLA or RCRA on the effective date of the final amendment removing the RCRA/CERCLA exemption. The effective date is the date of publication of the final rule in the **Federal Register**. We are proposing this applicability date for these recordkeeping and reporting requirements because we believe that the recordkeeping and reporting schedule that applied to new and existing site remediation affected sources in the 2003 final rule is still applicable to new and existing sources that become subject to the Site Remediation Rule as a

result of removing the CERCLA and RCRA exemptions. In addition, the available information indicated this requirement should be immediately implementable by the affected facilities.

The proposed compliance dates for the rule's substantive requirements differ according to whether a site remediation is an existing or new affected source. For the purpose of this proposed rule revision, you are an existing affected source if you commenced construction or reconstruction of the affected source before the date of publication of this proposed rule in the **Federal Register** and you conduct site remediation activities that are overseen by the EPA or another authorized agency (e.g., a state or local environmental protection agency) under the authorities of CERCLA or RCRA. For these existing affected sources, we are proposing a compliance date for the process vent, remediation material management unit, and equipment leak requirements of 18 months from the effective date of the final amendment removing the RCRA/CERCLA exemption.

You are a new affected source if you commenced construction or reconstruction of the affected source after the date of publication of this proposed rule in the **Federal Register** and you conduct site remediation activities that are overseen by the EPA or another authorized agency under the authorities of CERCLA or RCRA. For these new affected sources, we are proposing a compliance date for the process vent, remediation material

management unit, and equipment leak requirements on the effective date of the final amendment removing the RCRA/CERCLA exemption.

IV. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected sources?

We estimate 69 major source facilities will become subject to the Site Remediation Rule as a result of the proposed removal of the RCRA/CERCLA exemption. Based on available information from the RCRA and CERCLA programs, 24 of these facilities are expected to be subject to a limited set of the rule requirements under 40 CFR 63.7881(c)(1) due to the low annual quantity of HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed during the site remediations conducted at the facilities. These facilities will only be required to prepare and maintain written documentation to support the determination that the total annual quantity of the HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed at the facility is less than 1 megagram per year. They are not subject to any other emissions limits, work practices, monitoring, reporting, or recordkeeping requirements. For the remaining 45 facilities, we anticipate each facility will have an annual quantity of HAP in the removed remediation material of 1 megagram or more. For these

facilities, we expect that either the facilities already meet the emission control and work practice requirements of the Site Remediation Rule or no emission control requirements or work practice standards will apply because the waste is shipped offsite for treatment and no controls or work practice requirements would be applicable prior to treatment (e.g., contaminated soil before it is shipped offsite for destruction). For these 45 facilities, we anticipate the only new requirements for the Site Remediation Rule will be the initial and ongoing recordkeeping and reporting obligations required by 40 CFR 63.7936 and 40 CFR 63.7950 through 63.7952. These sections describe the recordkeeping and reporting activities required for transferring the remediation material off-site to another facility; the initial notification and on-going notification requirements; the ongoing semi-annual compliance reporting requirements; and recordkeeping requirements for continuous monitoring, planned routine maintenance, and for units that are exempt from control requirements. While new site remediations are likely to be conducted under the authority of CERCLA or RCRA in the future, we are currently not aware of any specific new site remediation facilities that are expected to be constructed.

The potential scope of this action's impacts on affected entities is discussed in greater depth in the memorandum, National Impacts Associated with the Proposed Amendments to

Remove the Exemption for Facilities Performing Site Remediations under CERCLA or RCRA in the NESHAP for Site Remediation, which is available in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2002-0021).

B. What are the air quality impacts?

We do not anticipate any HAP emission reductions from the proposed removal of the RCRA/CERCLA exemption. We expect that facilities newly becoming subject to the rule will either be subject to a limited set of the emissions control requirements of the rule due to the low amount of HAP contained in the remediation material handled, will already meet the emissions control requirements of the rule, or will not have any applicable emissions control requirements for the specific remediation activities and material handled.

C. What are the cost impacts?

None of the 69 affected facilities are anticipated to implement additional emissions control to meet the requirements of the Site Remediation Rule and, therefore, we estimate no capital costs associated with the proposed removal of the RCRA/CERCLA exemption. We have estimated the nationwide costs for compliance with the reporting and recordkeeping requirements to be approximately \$2.16 million.

D. What are the economic impacts?

Both the magnitude of control costs needed to comply with a regulation and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to that regulation. We estimate an annualized cost of \$13,000 per affected facility for the facilities with remediation waste containing HAP below the rule annual threshold of 1 megagram and \$41,000 per affected facility for the facilities with remediation waste containing the rule threshold amount of 1 megagram or more HAP annually. We, therefore, estimate the average annualized cost per affected facility to be about \$31,000 and the total annualized costs for the proposed amendments are estimated to be about \$2.16 million. Without detailed industry data, it is not possible to conduct a complete quantitative analysis of economic impacts. However, prior economic impact screening analyses suggest the impacts of the proposed amendment will be minimal. In the economic analysis for this action, Economic Impact Analysis for Site Remediation NESHAP Amendments (Docket ID No. EPA-HQ-OAR-2002-0021), we found that all firms with compliance costs are estimated to have firm-level cost-to-sales ratios of less than 0.03 percent.

E. What are the benefits?

The proposed standards will ensure existing air emissions controls implemented at facilities that become subject to the

rule with the removal of the RCRA/CERCLA exemption will continue to reduce emissions to at least the required levels of the rule. In addition, any future remediation activities at these facilities or facilities constructed in the future will include the required levels of HAP emissions control. We have not quantified the monetary benefits associated with the amendment; however, any future avoided emissions will result in improvements in air quality and reduce negative health effects associated with exposure to such air pollution.

V. Solicitation of Public Comment and Participation

The EPA seeks full public participation in arriving at its final decisions. The EPA requests public comment on the issues under reconsideration addressed in this notice: (1) the proposed removal of the RCRA and CERCLA exemptions and (2) the proposed removal of the applicability requirement that a site remediation activity be co-located with other source categories subject to other NESHAP. At this time, the EPA is seeking comment only on the amendments described above. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule or any other rule.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2062.06. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information requirements in this rulemaking are based on the notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These notifications, reports, and records are essential in determining compliance, and are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting

requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

Respondents/affected entities: Unlike a specific industry sector or type of business, the respondents potentially affected by this ICR cannot be easily or definitively identified. Potentially, the Site Remediation Rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP when the remediation activities are performed, the authority under which the remediation activities are performed, and the magnitude of the HAP in the remediation material meets the applicability criteria specified in the rule. A site remediation that is subject to this rule potentially may be conducted at any type of privately-owned or government-owned facility at which contamination has occurred due to past events or current activities at the facility. For site remediation performed at sites where the facility has been abandoned and there is no owner, a government agency takes responsibility for the cleanup.

Respondent's obligation to respond: Mandatory (42 U.S.C. 7414) .

Estimated number of respondents: 355 total for the source category, of which 69 are estimated to become respondents as a result of this proposed action.

Frequency of response: Semiannual.

Total estimated burden: 146,265 total hours (per year) for the source category, of which 13,268 hours are estimated as a result of this proposed action. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$8.9 million total (per year) for the source category, of which approximately \$811,000 is estimated as a result of this proposed action. This includes \$582,000 total annualized capital or operation and maintenance costs for the source category, of which \$0 is estimated as a result of this proposed action.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to oria_submissions@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR

between 30 and 60 days after receipt, OMB must receive comments no later than [**insert date 30 days after date of publication in the Federal Register**]. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities subject to the requirements of this action. The proposed amendments to the Site Remediation Rule are estimated to affect 69 facilities. Of these 69 facilities, 13 are owned by the federal government, which is not a small entity. The remaining 56 facilities are owned by 46 firms, and the Agency has determined that none of these can be classified as small entities using the Small Business Administration size standards for their respective industries. Details of this analysis are presented in the memorandum, Economic Impact Analysis for Site Remediation NESHAP Amendments, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2002-0021).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The

action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. There are no site remediations at facilities that would be affected by the proposed amendments that are owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045

because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will **not** have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The proposed amendments increase the level of protection provided to human health or the environment by regulating site remediations previously exempt from the rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency (EPA) proposes to amend Title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES**

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart GGGGG – National Emission Standards for Hazardous Air
Pollutants: Site Remediation**

2. Section 63.7881 is amended by:

- a. Revising paragraphs (a)(2) introductory text, (a)(2)(i) and (ii), (a)(3) introductory text, and (b) introductory text;
- b. Removing paragraphs (b)(2) and (3); and
- c. Redesignating paragraphs (b)(4) through (6) as (b)(2) through (4).

The revisions read as follows:

§ 63.7881 Am I subject to this subpart?

(a) * * *

(2) Your site remediation satisfies either paragraph (a)(2)(i) or (ii) of this section.

(i) Your site remediation is co-located at your facility with one or more other stationary sources that emit HAP and meet an affected source definition specified for a source category

that is regulated by another subpart under 40 CFR part 63. This condition applies regardless whether or not the affected stationary source(s) at your facility is subject to the standards under the applicable subpart(s).

(ii) Your site remediation is not co-located with one or more other stationary sources.

(3) Your site remediation, either alone or when aggregated with a co-located facility, is a major source of HAP as defined in § 63.2, except as specified in paragraph (a)(3)(i) or (ii) of this section. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

* * * * *

(b) You are not subject to this subpart if your site remediation qualifies for any of one of the exemptions listed in paragraphs (b)(1) through (4) of this section.

* * * * *

3. Section 63.7882 is amended by revising paragraph (b) and removing paragraph (c).

The revision reads as follows:

§ 63.7882 What site remediation sources at my facility does this subpart affect?

* * * * *

(b) *Affected existing and new sources.* Each affected source for your site is existing if you meet the conditions specified in paragraph (b)(1) or (2) of this section. Each affected source for your site is new if you meet the conditions specified in paragraph (b)(3) or (4) of this section.

(1) Your affected source is an existing source if you commenced construction or reconstruction of the affected source before July 30, 2002, and you are not conducting the site remediation under the authority specified in either paragraph (b)(5)(i) or (ii) of this section.

(2) Your affected source is an existing source if you commenced construction or reconstruction of the affected source before **[insert date of publication in the Federal Register]** and you are conducting the site remediation under the authority specified in either paragraph (b)(5)(i) or (ii) of this section.

(3) Your affected source is a new source if you commenced construction or reconstruction of the affected source on or after July 30, 2002, and you are not conducting the site remediation under the authority specified in either paragraph (b)(5)(i) or (ii) of this section. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

(4) Your affected source is a new source if you commenced construction or reconstruction of the affected source on or

after [**insert date of publication in the Federal Register**], and you are conducting the site remediation under the authority specified in either paragraph (b)(5)(i) or (ii) of this section.

(5) Your site remediation conducted under the authority specified in paragraphs (b)(5)(i) or (ii) is existing or new as specified in paragraphs (b)(1) through (4) of this section.

(i) Your site remediation is performed under the authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) as a remedial action or a non time-critical removal action.

(ii) Your site remediation is performed under a Resource Conservation and Recovery Act (RCRA) corrective action conducted at a treatment, storage and disposal facility (TSDF) that is either required by your permit issued by either the U.S. Environmental Protection Agency (EPA) or a State program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003.

* * * * *

4. Section 63.7883 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 63.7883 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard,

and operation and maintenance requirement in this subpart as specified in paragraph (a)(1) or (a)(2), as applicable to your affected source.

(1) If the affected source meets the conditions specified in § 63.7882(b)(1), you must comply no later than October 9, 2006.

(2) If the affected source meets the conditions specified in § 63.7882(b)(2), you must comply no later than [insert date 18 months after date of final rule publication in the Federal Register].

(b) If you have a new affected source that manages remediation material other than a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in one of paragraphs (b)(1) through (4) of this section, as applicable to your affected source.

(1) If the affected source meets the conditions specified in § 63.7882(b)(3) and the affected source's initial startup date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by October 8, 2003.

(2) If the affected source meets the conditions specified in § 63.7882(b)(3) and the affected source's initial startup date is after October 8, 2003, you must comply with each

emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(3) If the affected source meets the conditions specified in § 63.7882(b) (4) and the affected source's initial startup date is on or before [insert date of final rule publication in the Federal Register], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by [insert date of final rule publication in the Federal Register].

(4) If the affected source meets the conditions specified in § 63.7882(b) (4) and the affected source's initial startup date is after [insert date of final rule publication in the Federal Register], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(c) If you have a new affected source that manages remediation material that is a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in one of paragraphs (c) (1) through (4) of this section, as applicable to your affected source.

(1) If the affected source meets the conditions specified in § 63.7882(b) (3) and the affected source's initial startup

date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006.

(2) If the affected source meets the conditions specified in § 63.7882(b) (3) and the affected source's initial startup date is after October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(3) If the affected source meets the conditions specified in § 63.7882(b) (4) and the affected source's initial startup date is on or before [insert date of final rule publication in the Federal Register], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than [insert date of final rule publication in the Federal Register].

(4) If the affected source meets the conditions specified in § 63.7882(b) (4) and the affected source's initial startup date is after [insert date of final rule publication in the Federal Register], you must comply with each emission limitation, work practice standard, and operation and

maintenance requirement in this subpart that applies to you upon initial startup.

* * * * *

5. Section 63.7950 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.7950 What notifications must I submit and when?

* * * * *

(b) (1) As specified in § 63.9(b)(2), if you start up your affected source before October 8, 2003 and you are not conducting the site remediation under the authority specified in either § 63.7882(b)(5)(i) or (ii), you must submit an Initial Notification not later than 120 calendar days after October 8, 2003.

(2) As specified in § 63.9(b)(2), if you start up your affected source before **[insert date of publication in the Federal Register]** and you are conducting the site remediation under the authority specified in either § 63.7882(b)(5)(i) or (ii), you must submit an Initial Notification not later than 120 calendar days after [insert date of final rule publication in the Federal Register].

(c) As specified in § 63.9(b)(3), if your affected source is new or reconstructed as specified in § 63.7882 (b)(3) or (4) and you start your new or reconstructed affected source on or after the respective effective date, you must submit an Initial

Notification no later than 120 calendar days after initial startup.

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